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Supreme Court, U.S.
FILED

SEP 10 1990

JOSEPH F. SPANIO, JR.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

J.J. BLONIEN & ASSOCIATES, INC. and
CITY OF WEST ALLIS,

Petitioners,

v.

COMMUNITY NEWSPAPERS, INC. and
ELSA R. SCHUPMEHL,

Respondents.

APPENDIX

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456 NORTH WESTERN REPORTER 2d Series
Community Newspapers v. West Allis
Cite as 456 N.W.2d 646 (Wis. App. 1990)

COMMUNITY NEWSPAPERS, INC.,
and Elsa R. Schupmehl,
Plaintiffs-Respondents,

v.

The CITY OF WEST ALLIS,
Defendant,
and
J.J. BLONIEN & Associates, Inc.,
also d/b/a The West Allis
Enterprise, Defendant-Appellant.

No. 89-0998.

Court of Appeals of Wisconsin.

Submitted on Briefs Feb. 7, 1990.

Opinion Filed April 17, 1990.

Opinion Released April 17, 1990.

Newspaper appealed from order of the Circuit Court, Milwaukee County, Russell W. Stamper, J., which invalidated its contract with city to publish legal notices. The Court of Appeals, Sullivan, J., held that: (1) newspaper circulation paid for by advertising revenues does not constitute "paid circulation" for purposes of statute governing official newspapers; (2) term "subscribers" in that statute does not include persons who do not return newspapers delivered without charge to

their doorstep; and (3) requirement of paid circulation in the statute does not violate equal protection guarantees.

Affirmed.

1. Appeal and Error 842(8)

Application of an unambiguous statute to a given set of facts presents a legal issue which is reviewed without deference to the trial court's conclusion.

2. Statutes 184

Court is bound to construe a statute in a manner that effects the legislative purpose.

3. Newspapers 3(5)

Newspaper circulation which is paid for by advertising revenues does not constitute "paid circulation" for purposes of statute setting forth qualifications for newspapers which publish legal notices. W.S.A. 985.03(1)(a).

See publication Words and Phrases for other judicial constructions and definitions.

4. Newspapers 3(5)

Term "subscribers" as used in statute setting forth qualifications for newspapers which publish legal notices does not include persons who do not return papers delivered without charge to their doorstep. W.S.A. 985.03(1)(a).

See publication Words and Phrases for other judicial constructions and definitions.

5. Constitutional Law 225.2(1)

Statute requiring that newspaper meet certain paid subscription qualifications in order to receive contract to publish legal notices was not subject to strict scrutiny when challenged on the basis that it violated equal protection because persons who are too poor to purchase a newspaper would not receive notice of elections. W.S.A. 985.03(1)(a); U.S.C.A. Const.Amend. 14.

6. Constitutional Law 225.2(1)

Newspapers 3(5)

Statutory requirement that newspaper meet certain paid subscription requirements in order to receive contract to publish legal notices is a logical classification based on legislative consideration of the common experience that a person who pays for a newspaper is more likely to read it, notwithstanding claim that it denies equal protection to persons who are too poor to buy newspapers because they will not receive notice of elections. W.S.A. 985.03; U.S.C.A. Const.Amend. 14.

Margaret Baumgartner and Howard Goldberg of DeWitt, Porter, Huggett, Schumacher & Morgan, S.C., Madison, on briefs, for defendant-appellant J.J. Blonien & Associates, Inc.

Carolyn Gnaedinger of Quarles & Brady, and Richard C. Gad of Richard C. Gad, S.C., Milwaukee, on briefs, for plaintiffs-respondents Community Newspapers, Inc. and Elsa R. Schupmehl.

Before MOSER, P.J., and SULLIVAN and FINE, JJ.
SULLIVAN, Judge.

J.J. Blonien & Associates, d/b/a *The West Allis Enterprise*, appeals from a partial summary judgment declaring a contract for the publication of legal notices void and enjoining the City of West Allis from spending public funds to publish legal notices in the *Enterprise*. Because we conclude that the *Enterprise* failed to qualify for the publication of legal notices under sec. 985.03(1)(a), Stats., and because we conclude that the trial court's interpretation of that statute does not deny a segment of the electorate its right of equal protection, we affirm the order of the trial court.¹

In April of 1988, Blonien and Community Newspapers, Inc. (CNI), publisher of the *West Allis Star*,

¹On January 29, 1990, the City of West Allis made a motion to consolidate Case No. 90-0202 with this pending appeal. In support of its motion, the City argues that the issues in the cases are identical. However, several issues in the appeals are not identical. Because determination of the pending appeal may resolve common issues, the City's motion is denied.

submitted bids on a contract to publish legal notices for the City of West Allis. Blonien submitted a bid to publish the notices in the *Enterprise* for \$4.95/column inch. CNI's bid for publication in the *Star* was at \$5.50/column inch. The City awarded a one-year contract to Blonien.

CNI filed this action against Blonien and the City seeking declaratory and injunctive relief. On CNI's motion for summary judgment, the trial court concluded that under the terms of sec. 985.03, Stats., the *Enterprise* did not qualify for the publication of legal notices. That section provides:

985.03 Qualification of newspapers.

(1)(a) No publisher of any newspaper in this state shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice unless, for at least 2 years immediately before the date of the notice publication, the newspaper has been published regularly and continuously in the city, village or town where published, and has had a bona fide paid circulation:

1. That has constituted 50% or more of its circulation; and,

2. That has had actual subscribers at each publication of not less than 1,000 copies in 1st and 2nd class cities, or 300 copies if in 3rd and 4th class cities, villages or towns.

The trial court concluded that the *Enterprise* was not qualified to carry legal notices because its "paid circulation" did not constitute 50% or more of its circulation. The court granted summary judgment in favor of CNI and declared the contract between Blonien and the City void.

Our review of an order granting summary judgment involves the same standards used by the trial court in its determination of the summary judgment motion. *Juneau Square Corp. v. First Wisconsin Nat'l Bank of Milwaukee*, 122 Wis.2d 673, 681, 364 N.W.2d 164, 168 (Ct.App.1985). When the pleadings, depositions, affidavits and other papers on file show that there is no genuine issue as to any material fact, the movant is entitled to judgment as a matter of law. Sec. 802.08(2), Stats. The motion is particularly appropriate when the determination of a legal issue or issues concludes the action. *Johansen v. Reinemann*, 120 Wis.2d 100, 101, 352 N.W.2d 677, 678 (Ct.App.1984).

Blonien contends that the *Enterprise* qualifies for the publication of legal notices under sec. 985.03. The thread of his argument ties sec. 985.02(1), Stats., which requires publication of a legal notice in a newspaper likely to give notice with the terms "bona fide paid circulation" and "subscribers" appearing in sec. 985.03(1)(a).² Blonien argues that paid circulation means payment from any source, including advertisers.

Each week, 25,000 copies of the *Enterprise* are delivered to the homes of West Allis residents. The cost of circulation is paid entirely by advertisers. There is no charge to the recipient. Blonien insists that under the terms of the statute payment from any source, readers, recipients, donors, friends, relatives, associates and institutions, as well as advertisers, constitutes a "paid circulation." He argues that contracts between the

²See sec. 985.02(1), Stats. ("Except as otherwise provided by law, a legal notice shall be published in a newspaper likely to give notice in the area or to the person affected.")

Enterprise and its advertisers legally bind it to publish and therefore assure its continuous circulation. He also argues that a "subscriber" is anyone who agrees or consents to accept delivery of a newspaper on a regular basis. A recipient's failure to request nondelivery of the *Enterprise*, Blonien concludes, implicitly establishes his or her status as a subscriber.

[1] The parties do not argue that sec. 985.03(1)(a) is ambiguous. In clear and easily understandable terms the statute sets forth the conditions a newspaper must meet before its publisher may lawfully contract for publication of legal notices. Application of an unambiguous statute to a given set of facts presents a legal issue which we review without deference to the trial court's conclusions. *State v. McManus*, 152 Wis.2d 113, 122-23, 447 N.W.2d 654, 657 (1989).

[2-4] We reject Blonien's analysis. It rends and tears at the fabric of sec. 985.03(1)(a). Selecting individual words, he defines them in a manner to reach his desired

result. While we are aware that a particular word may have a variety of meanings, *see Lukaszewicz v. Concrete Research, Inc.*, 43 Wis.2d 335, 342, 168 N.W.2d 581, 585 (1969), we are bound to construe a statute in a manner that effects its legislative purpose. *Id.* Therefore, we construe the meaning of individual words in an unambiguous statute in the context of its subject matter. *Id.* We are not free to interpret the words of an unambiguous statute to achieve a result clearly not intended by the legislature.

Section 985.03(1)(a) unambiguously requires that for publication of legal notices, a newspaper, for at least two prior years, must be published in the city and must have a bona fide paid circulation. Also, the paid circulation must consist of 50% or more of its total circulation, and subscribers in a city of the second class, such as West Allis, must number at least 1,000. *See Bartlett v. Joint County School Comm.*, 11 Wis.2d 588, 106 N.W.2d 295

(1960).³ We reject as inconsistent with the subject and context of sec. 985.03(1)(a) Blonien's arguments that a newspaper circulation paid for by advertising revenues constitutes a "paid circulation," and that "subscribers" includes persons who do not return papers delivered without charge to their doorstep. Recipients of the *Enterprise* are not paid subscribers and rarely pay on a single-copy basis. The City's contract with Blonien contravenes sec. 985.03(1)(a) and is void. See 71 Op. Att'y Gen. 177 (1982).

Furthermore, we conclude that Blonien's analysis renders parts of the statute superfluous. The structure of sec. 985.03 clearly indicates that the legislature intended to distinguish between a "paid circulation" and a "circulation." To qualify under the statute, a newspaper's

³In *Bartlett* the supreme court's analysis implicitly equated "paid subscribers" with the term "bona fide paid circulation to actual subscribers" that appeared in the predecessor to sec. 985.03, Stats. See *Bartlett*, 11 Wis.2d at 593, 106 N.W.2d at 297.

"paid circulation" must constitute 50% or more of its "circulation." See sec. 985.03(1)(a)1, Stats. Blonien argues that a "paid circulation" may be paid for by any source. However, he ignores the fact that every newspaper circulation is paid for by some source, be it subscribers, advertisers, or the publisher itself. Thus, under Blonien's analysis, every circulation would be a "paid circulation." We may not interpret a statute in a manner that renders any of its parts superfluous. *Milwaukee Metro. Sewerage Dist. v. Wisconsin DNR*, 122 Wis.2d 330, 336, 362 N.W.2d 158, 161 (Ct.App.1984). Because Blonien's analysis renders the word "paid" in the term "paid circulation" superfluous, it destroys the legislature's distinction between a "paid circulation" and a "circulation," and obviates the effect of sec. 985.03(1)(a)1, Stats. Therefore, we are bound to reject it.

Blonien next argues that the trial court's interpretation of sec. 985.03(1)(a) violates equal

protection.⁴ He correctly argues that "the opportunity for equal participation by all voters" is a sine qua non to a citizen's role in the affairs of government. See *Reynolds v. Sims*, 377 U.S. 533, 566, 84 S.Ct. 1362, 1384, 12 L.Ed.2d 506 (1964). A statute which requires a citizen to obtain notice by purchase of a newspaper, Blonien argues, violates equal protection as much as a statute that requires a candidate to pay a fee to have his or her name

⁴ Amend. XIV, sec. 1, United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Art. 1, sec. 1, Wisconsin Constitution provides:

Equality; inherent rights. Section 1. All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

The due process and equal protection provisions of the state and federal constitutions are substantially equivalent to each other. *State v. McManus*, 152 Wis.2d at 130, 447 N.W.2d at 660.

placed on the ballot, *see Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), or requires a voter to pay a poll tax, *see Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). Blonien's argument is based on his assertion that some electors may be too poor to purchase a newspaper.

The scope and standard for our review of a constitutional attack upon a statute is restated in *State v. McManus*, 152 Wis.2d at 129, 447 N.W.2d at 660:⁵

The constitutionality of a statute is a question of law which this court may review without deference to the lower court. Legislative enactments are presumed constitutional, and this court has stated it will sustain a statute against attack if there is any reasonable basis for the exercise of legislative power. The party bringing the challenge must show the statute to be unconstitutional beyond a reasonable doubt. Every presumption must be indulged to sustain the law if at all possible and, wherever doubt exists as to a legislative enactment's constitutionality, it must be resolved in favor of constitutionality. The

⁵Blonien does not expressly challenge the constitutionality of sec. 985.03(1)(a), Stats. He argues that the trial court's interpretation of the statute gives rise to an unconstitutional effect. Because we hold that the trial court's interpretation of the statute is correct and gives effect to the intent of the legislature, we will review this issue from the standpoint that Blonien has challenged the constitutionality of the statute itself.

court cannot reweigh the facts found by the legislature. If the court can conceive any facts on which the legislation could reasonably be based, it must hold the legislation constitutional. [Citations omitted.]

See also State ex rel. Jones v. Gerhardstein, 141 Wis.2d 710, 733, 416 N.W.2d 883, 892 (1987).

[5] Blonien argues that we should employ the "strict scrutiny" test to determine whether a specific governmental objective is involved in the publication restriction and whether the statute achieves that objective. However, he cites no authority to establish the right of each elector to individual notice of an election. His case authority pertains to statutes which directly bar exercise of a right. We reject Blonien's argument for two reasons. First, no elector's right to vote is contingent upon status of race, alienage, national origin or wealth. *See Moedern v. McGinnis*, 70 Wis.2d 1056, 1072, 236 N.W.2d 240, 248 (1975). Second, the statutes sufficiently provide for notice to be given "in the area," *see sec.*

985.02(1), Stats., or "in an area," see sec. 985.01(2)(a).⁶ Blonien presents no valid reason why sec. 985.03(1)(a) should be held up to the litmus of strict scrutiny. In no way does it prohibit a particular class from exercising its right to vote. See *McDonald v. Board of Election Comm'rs of Chicago*, 394 U.S. 802, 807-08, 89 S.Ct. 1404, 1407-08, 22 L.Ed.2d 739 (1969).⁷

Because there is no suspect class, we confine our inquiry to whether the legislative purpose embodied in sec. 985.03(1)(a) is irrational or arbitrary. See *Gerhardstein*, 141 Wis. at 733, 416 N.W.2d at 892. If a reasonable basis for the limit or classification exists, there is no equal protection violation. *Id.*

⁶Blonien's concession that a constructive notice of election would fulfill constitutional requirements accords with the mandate of sec. 985.02(1), Stats., that notice be directed to the area.

⁷We also note that the Supreme Court has never held that wealth discrimination alone provides a basis for application of the strict scrutiny test. See *San Antonio Indep. School District v. Rodriguez*, 411 U.S. 1, 29, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16 (1973).

[6] We conclude that the statutory scheme involving sec. 985.03 is based on a logical classification. If a newspaper is used as a method of publication, it must be likely to give notice in the area or to the persons affected. However, to qualify for compensation, publishers of newspapers must meet the paid circulation requirements. In this respect, the legislature could consider the common experience of life that a person who pays for a newspaper is more likely to read it, *see In re Avila*, 501 A.2d 1018, 1019 (N.J.Super.Ct.App.Div.1985), and that a paid-for newspaper contains news of general interest.

In assessing the type of notice of election which should be given to electors, the legislature was aware of the constantly changing composition of the electorate; i.e., electors moving in and out of the district, electors dying or suffering incapacity to vote. Personal notice of election to each elector is virtually impossible. The legislature was also aware of the fact that public libraries

invariably display the latest edition of local newspapers which any elector can peruse free of charge. Thus, the legislative distinction between paid and unpaid circulation in sec. 985.03 has a rational basis. Blonien has not proved that the notices published under its terms are unlikely to give notice in the area or to the person affected. Because its conditions for the publication of legal notices are neither arbitrary nor irrational, we affirm the decision of the trial court.

Order affirmed.

STATE OF WISCONSIN
CIRCUIT COURT MILWAUKEE COUNTY

COMMUNITY NEWSPAPERS,
INC. and ELSA R.
SCHUPMEHL,

Plaintiffs,

v.

Case No. 010-195

THE CITY OF WEST ALLIS
and J.J. BLONIEN &
ASSOCIATES, INC.,
also d/b/a The West Allis
Enterprise,

Defendants.

**ORDER FOR PARTIAL SUMMARY JUDGMENT
AND DECLARATORY AND INJUNCTIVE RELIEF**

The plaintiffs' Motion for Partial Summary Judgment and Declaratory and Injunctive Relief on plaintiff's Amended Complaint, and for summary judgment in favor of plaintiffs on the Counterclaim of defendant J. J. Blonien & Associates, Inc.; and defendant J. J. Blonien & Associates, Inc.'s cross motion for summary judgment

dismissing the claim of Elsa R. Schupmehl and for reasonable attorneys fees and costs, came on for hearing and argument on March 13, 1988. The plaintiffs appeared by Carolyn Gnaedinger of Quarles & Brady and Richard C. Gad of Richard C. Gad, S.C., the defendant City of West Allis appeared by Michael J. Sachen, City Attorney, and John Kastl; defendant J.J. Blonien & Associates, Inc. appeared by Howard Goldberg and Margaret Baumgartner of DeWitt, Porter, Huggett, Schumacher & Morgan, S.C. The Court, having read the pleadings, motions, briefs, affidavits and exhibits, and having heard the arguments of counsel and being fully advised in the premises, makes the following findings of fact, conclusions of law and order:

FACTS

1. Effective May 19, 1988, the City of West Allis awarded a contract for the publication of its legal notices to J. J. Blonien & Associates, Inc. ("Blonien"), after making a determination that Blonien had submitted the lowest effective bid for publication of council proceedings

and legal notices for the period June 1, 1988 through May 31, 1989. Blonien has published the City of West Allis' notices and the City has made payments to Blonien under the terms of the contract since June 1, 1988 until March 27, 1989.

2. Plaintiff Community Newspapers, Inc. ("CNI") was an unsuccessful bidder on the contract for the publication of the City's legal notices. CNI was the second lowest bidder. Blonien bid at the rate of \$4.95 per column inch and CNI bid at the rate of \$5.50 per column inch.

3. Plaintiff Elsa R. Schupmehl is an adult who resides at 2145 South 59th Street, West Allis, WI 53209, and is and has been a resident and taxpayer of the City since at least 1973.

4. Defendant City of West Allis ("City") is a municipal corporation of the State of Wisconsin and is a city of the second class as defined in the Wisconsin statutes.

5. Blonien has published a weekly periodical named The West Allis Enterprise ("the Enterprise"), regularly and continuously on a weekly basis from and after May 1, 1986.

6. The Enterprise does not have, and did not at any time after May 1, 1986, have a bona fide paid circulation that constituted fifty (50) percent or more of its circulation. From and after May 1, 1986, Blonien has published 25,000 or more copies of the Enterprise each week. The great majority of those copies, and well over 50 percent thereof, are delivered each week to residences in the City by a private carrier paid by Blonien. Blonien mails a few copies to businesses and locations outside of the City. The residents of the City, to whom copies of the Enterprise are delivered by private carrier, do not pay a subscription fee to receive the Enterprise.

7. The Enterprise did not, during the period May 1, 1986 through May 31, 1988, have a paid circulation which had actual subscribers at each publication date of

1,000 or more copies; for instance, for the weekly issue of April 24, 1988, 25,550 copies were printed and 25,000 of those copies were distributed by the private carrier in West Allis. Therefore, for that publication date, the Enterprise's bona fide paid circulation, if any, could not have had actual subscribers of at least 1,000 copies, since only 550 copies remained after distribution of free copies by the private carrier.

8. Income from the sale of advertising space in the Enterprise has exceeded Blonien's expenses in producing and distributing the Enterprise.

CONCLUSIONS OF LAW

1. Plaintiff Schupmehl has standing as a taxpayer to challenge the validity of the contract between the City and Blonien, and to seek a declaration of the proper construction of sec. 985.03, Wis. Stats.

2. Plaintiff CNI has standing, as an unsuccessful bidder, and the only other bidder for the work, to challenge the validity of the contract between the City

and Blonien, and to seek a declaration of the proper construction of sec. 985.03, Wis. Stats.

3. This Court has jurisdiction and authority to render a declaratory determination of this case under sec. 806.04, Wis. Stats., under plaintiffs' Complaint and Blonien's Counterclaim.

4. There is no genuine issue as to any material fact and plaintiffs are entitled to judgment as a matter of law and to the specific relief as set forth below.

5. Both CNI and Schupmehl have sufficiently complied with sec. 893.80, Wis. Stats., respecting claims against governmental bodies, officers and employees.

6. The City of West Allis suffered no prejudice by reason of the time when it became aware of the protective order in this case filed November 16, 1988. It knew or should have known of the existence of the Order no later than the week of January 9, 1989, and has not shown that it was precluded from doing any necessary discovery prior to the hearing on March 13, 1989.

7. Sec. 985.03, Wis. Stats., is clear and unambiguous.

8. The statutory requirement that a newspaper have "had a bona fide paid circulation that has constituted 50 percent or more of its circulation" means that for a period of at least two years immediately prior to notice publication, one-half or more of the total number of copies in circulation of the newspaper in which notices to be published must have been purchased by the ultimate recipient, the consumer, on the basis of a paid subscription fee or on a single copy basis.

9. The statutory requirement that the newspaper have "had a bona fide paid circulation ... that has had actual subscribers at each publication of not less than 1,000 copies in first- and second-class cities" means that for a period of at least two years immediately prior to notice publication, the newspaper in which notice is to be published must have had, at each publication date, at

least 1,000 actual subscribers who have paid a subscription fee for the newspaper.

10. One who purchases copies of a newspaper on a single copy basis is not a subscriber.

11. One who simply allows a copy of a periodical to be placed at his residence on a continuous basis, without objection, is not a subscriber.

12. The fact that Blonien's advertisers may have paid sufficient amounts in advertising charges to meet or exceed Blonien's expenses in producing or distributing its papers has no bearing on the determination of whether Blonien's publications meet the statutory requirements of sec. 985.03, Wis. Stats.

NOW THEREFORE IT IS HEREBY ORDERED AS FOLLOWS:

A. The plaintiffs' motion for a declaration that defendant City of West Allis unlawfully awarded J. J. Blonien & Associates, Inc. a contract to publish legal notices for the City is granted, and plaintiffs' motion for

a declaration that the contract between the City of West Allis and J. J. Blonien & Associates, Inc. is invalid, illegal and void, is granted.

B. The plaintiffs' Motion for Summary Judgment in their favor on Blonien's Counterclaim for Declaratory Judgment is granted.

C. The plaintiffs' motion for a preliminary injunction enjoining the City from expending any public funds to publish legal notices in the Enterprise is granted effective March 27, 1989.

D. In the exercise of the Court's discretion, and in light of sec. 985.06(4), Wis. Stats., the Court declines to order that the City award the remaining term of the contract to plaintiff CNI.

E. The Motion of defendant Blonien for Summary Judgment dismissing the claim of Elsa R. Schupmehl and for attorneys' fees and costs is denied.

F. The Court declares the proper construction of sec. 985.03, Wis. Stats., as follows:

1. The statutory requirement of sec. 985.03(1)(a) that:

"No publisher of any newspaper in this state shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice unless, for at least 2 years immediately before the date of the notice publication, the newspaper has been regularly and continuously in the city, village or town where published, and has had a bona fide paid circulation;

a. That has constituted 50% or more of its circulation ..."

means that for a period of at least two years immediately prior to notice publication, one-half or more of the total number of copies in circulation of the newspaper in which notice is to be published must have been purchased by the ultimate recipient on the basis of a paid subscription or on a single copy basis.

2. The statutory requirement of sec. 985.03(1)(a) that:

"No publisher of any newspaper in this state shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice unless, for at least 2 years immediately before the date of the notice

publication, the newspaper has been published regularly and continuously in the city, village or town where published, and has had a bona fide paid circulation;

- b. ^{...}
That has had actual subscribers at each publication of not less than 1,000 copies in 1st or 2nd class cities"

means that for a period of at least two years immediately prior to notice publication, the newspaper in which notice is to be published must have had, at each publication, at least 1,000 actual subscribers who have paid a subscription fee to receive the newspaper.

Dated at Milwaukee, Wisconsin this 12 day of April, 1989.

BY THE COURT:

/s/
Russell W. Stamper
Circuit Judge

**Office of the Clerk
SUPREME COURT
State of Wisconsin**

To:

Madison, June 12, 1990

Hon. Russell W. Stamper
Milwaukee County
Circuit Court
901 N. 9th St., Rm. 409
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*See Below

Carolyn A. Gnaedinger
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411 E. Wisconsin Ave.
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The Court today announced an order in your case as follows:

No. 89-0998 Community Newspapers, Inc., et al. v.
The City of West Allis, et al. T.C.
#010-195

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalf of defendant-appellant-petitioner J.J. Blonien & Associates, Inc., a petition to intervene filed on behalf of the City of West Allis, and a statement in opposition to petition to intervene filed on behalf of Community Newspapers, Inc. and Elsa R. Schupmehl, and considered by the court,

IT IS ORDERED that the petition for review is denied;

IT IS FURTHER ORDERED that the petition to intervene is dismissed as moot; and

IT IS FURTHER ORDERED that Community Newspapers is awarded \$50 costs to be paid by J.J. Blonien & Associates.

*Margaret Baumgartner
DeWitt, Porter, Huggett,
Schumacher & Morgan
Two E. Mifflin St., #600
Madison, WI 53701

Howard Goldberg
Michael J. Sachen
City Attorney
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Abrahamson, J., dissents.

MARILYN L. GRAVES
Clerk of Supreme Court

